

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING

SUBJECT OF HEARING:

A hearing will be held regarding proposed changes to the fair claims settlement practices regulations found at California Code of Regulations, Title 10, Chapter 5, Subchapter 7.5, Sections 2695.1 through 2695.14.

AUTHORITY AND REFERENCE:

The Insurance Commissioner proposes to adopt, amend and repeal specified portions of the subject regulations under the authority of Insurance Code Sections 790.10, 12921, and 12926. These proposed changes to the regulations will implement, interpret and make specific provisions of Insurance Code Section 790.03(h).

HEARING DATE AND LOCATION:

Notice is hereby given that public hearings will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to these regulations as follows:

Date and time: September 21, 2005
10:00 am
Location: 45 Fremont Street
22nd Floor Hearing Room
San Francisco, CA 94105

Date and time: September 22, 2005
10:00 am
Location: Department of Insurance Hearing Room
Ronald Reagan State Office Building
300 South Spring Street, 1st Floor
Los Angeles, California 90013

The hearings will continue on the dates noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS:

All persons are invited to present oral and/or written comments at the scheduled public hearings. Written comments not presented should be addressed to the following contact person:

Risa Salat-Kolm, Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538.4127

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person. If she is unavailable, inquiries may be addressed to the following backup contact person:

Cindy A. Ossias, Senior Staff Counsel
45 Fremont Street, 21st floor
San Francisco, CA 94105
Telephone: (415) 538.4124

DEADLINE FOR WRITTEN COMMENTS:

All written materials, unless submitted at the hearings, must be received by the Insurance Commissioner, addressed to one of the contact persons at her respective address listed above, no later than **5:00** on September 22, 2005. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE:

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: salat-kolmr@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are sent to the following facsimile number: (415) 904-5490. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above.**

ACCESS TO HEARING ROOMS:

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for these hearings in order to make special arrangements, if necessary.

INFORMATIVE DIGEST:

SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW:

California Insurance Code Section 790.03(h) sets forth sixteen claims settlement practices which, if knowingly committed or performed with such

frequency as to indicate a general business practice, are held to be unfair claims settlement practices. The Commissioner is authorized under Insurance Code Section 790.10 to promulgate rules and regulations, and amendments and additions thereto, as are necessary to administer Section 790.03(h) and related sections. The original Fair Claims Settlement Practices Regulations became effective in January of 1993, with amendments becoming effective in May of 1997 and October of 2004. The current regulations may be found at California Code of Regulations, Title 10, Section 5, Subchapter 7.5, Sections 2695.1 through 2695.13. The Commissioner believes that additional modifications to the regulations are necessary to effectively administer Insurance Code Section 790.03(h).

EFFECT OF PROPOSED ACTION:

The major effects of the regulations are as follows:

Section 2695.1(c) - Applicability of Regulations to Surety Claims (Repeal/Adopt)

Existing subsection 2695.1(c) specifies, because of the unique three-party relationship between the surety, beneficiary and principal, only some of the subsections apply to the handling or settling of claims brought under surety bonds. The proposed change is to repeal the subsection and adopt language that recognizes both the unique three-party relationship and the fact that the processing of surety claims is subject to the Unfair Practices Act (Insurance Code Section 790 et seq.).

Section 2695.2(s) - Definition of Proof of Claim (Amend)

This subsection is amended to include in the definition of "proof of claim" evidence or documentation that supports the claim that was received from sources other than the claimant.

Section 2695.7(g)(7) - Unreasonably Low Settlement Offers (Amend)

In determining whether a claims settlement offer is unreasonably low, this subsection, as amended, recognizes the difference in claims negotiations depending on whether the claimant is represented by counsel.

Section 2695.7(r) - Ensuring the Accuracy of Data (Adopt)

The proposed subsection specifies that insurers must take reasonable steps to ensure the accuracy of data used in evaluating and settling claims. Although insurers are permitted to use third party vendor services to determine damages, they are required by law to offer adequate, accurate settlements no matter what information and resources are used to establish damages.

Section 2695.8(b) - Adjusting of Third Party Total Loss Auto Claims (Amend)

This subsection is amended to clarify that the evaluation of auto claims should be consistent regardless of whether the claim is made by a first or third party claimant.

Section 2695.8(j) - Depreciation of Labor in First Party Partial Loss Auto Claims (Adopt)

This newly adopted subsection states that, in a first party partial loss claim, the expense of labor to repair or replace the damage is not subject to depreciation unless the insurance contract clearly and unambiguously permits the depreciation of the expense of labor.

Section 2695.8(k) - Payment of Towing and Storage Charges (Re-letter and Amend)

This subsection is amended to clarify that insurers shall reimburse the insured for those reasonable fees incurred in having the loss vehicle towed from the accident scene and stored thus protecting the vehicle from further damage. The subsection is also amended so that third parties are similarly treated while recognizing the differences between first and third party claims.

Section 2695.9(f)(1) - Depreciation, Betterment and Salvage in Residential and Commercial Property Claims (Adopt)

This new subsection clarifies that, although property may depreciate, the cost of the labor used to replace that property is not subject to depreciation.

Section 2695.10(b) - Time Period for Surety to Accept or Deny Claim (Amend)

This subsection is amended to reduce the time from 60 to 40 days for a surety to accept or deny a claim and requires the surety to explain to the claimant in writing why the claim has been rejected or denied.

Section 2695.10(b)(1) - Principal's Absence or Non-Cooperation (Adopt)

This new subsection states that a principal's absence or non-cooperation does not excuse a surety insurer's unreasonable delay in accepting or denying a claim.

Section 2695.10(b)(2) - Principal's Protest or Denial of Liability (Adopt)

This new subsection specifies that a surety shall not deny a claim based solely upon the principal's denial of liability.

Section 2695.10(g) - Notice of Statute of Limitations (Adopt)

This new subsection specifies that a surety insurer shall provide the claimant with written notice of any applicable statute of limitations no less than 60 days prior to the statute's expiration date.

Section 2695.10(h) - No Unreasonably Low Settlement Offers (Adopt)

This new subsection states that no surety insurer shall attempt to settle a claim by making unreasonably low settlement offers and lists factors the Commissioner shall consider in determining whether a settlement offer is unreasonably low.

Section 2695.12(a) - Factors Considered in Determining Penalties (Amend)

This subsection is amended to reflect that the Commissioner shall consider the factors described in the subsection to determine appropriate penalties and not whether a violation of the regulations has occurred.

Section 2695.12(a)(7) - Number of Claims Reviewed by Department (Amend)

This subsection is amended to clarify that, in order to determine appropriate penalties, the Commissioner shall consider the number of claims where violations have been found against the number of claims examined by the Department during the relevant time period.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING:

The Commissioner has determined that there will be no cost or savings, discretionary or nondiscretionary, to any local agency, state agency or school district from the proposed regulations, and that the proposed regulation will not affect federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE:

The Commissioner has made an initial determination that the proposed amendments may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurers and claims agents as defined under the current regulations. There will be additional record-keeping requirements imposed upon certain insurers that have not previously been subject to these regulations. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting

requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES:

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

FINDING OF NECESSITY:

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA:

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS:

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES:

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS:

The Commissioner has determined that the proposed amendments may affect small businesses to the extent independent insurance adjusters (as opposed to those who are insurance company employees) qualify as small businesses. These individuals and entities will be required to comply with the applicable amendments.

COMPARABLE FEDERAL LAW:

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS:

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed changes to the regulations. Upon **written or e-mailed** request, the initial statement of reasons will be made available for inspection and copying. Written requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon **written or e-mailed** request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING:

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS:

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. To access them, go to <http://www.insurance.ca.gov>. Find near the end of the rightmost column, under the heading "Quick Links," the "Legal Information" link. Click it. On the "Legal Information" page, click on the "Proposed Regulations" link near the top of the page. When the "Search or Browse for Documents for Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter 'RH05044134' (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code number of a code section that the regulations implement (for instance, "790.03"), or search by keyword ('fair,' for example, or 'settlement'). Then, click on the "Submit" button to display links to the various filing

documents.

To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "Fair Claims Settlement Practices" link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE:

If the regulations adopted by the Department differ but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

Dated:

2005

JOHN GARAMENDI
Insurance Commissioner

By

Jerry L. Whitfield
Deputy Commissioner

